IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.35140 of 2006
MD.MAHFUJULLAH & ORS
Versus
STATE OF BIHAR & ANR

For the petitioners	**: M/s. Ganesh Prasad Singh, Senior Advocate and M.Z. Quamar, Advocate.**
For the State	**: Mr. Jharkhandi Upadhayay, A.P.P.**
For O.P. No.2	**: M/s. Rajendra Prasad Singh, Senior Advocate and Rajeev Kumar Singh, Advocate.**

O R D E R

All the four accused of Complaint Case No.1247 of 2002 have prayed for the quashing of the entire criminal prosecution arising therefrom including the order dated 9.5.2003 passed therein by the learned Chief Judicial Magistrate, Purnea, whereby he has taken cognizance of the offence under Section 498-A I.P.C. on a finding that a prima facie case thereunder has been made out.

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The complainant , one Durvesheshwar @ Guria, impleaded herein as O.P. No.2, filed the aforesaid complaint inter alia stating that her marriage with petitioner no.1was solemnized on 21.4.2008 whereat a Nikahnama was also prepared but the husband did not hold bidayagi and take her away to the matrimonial home for one month and instead all the accused persons started pressurizing the complainant's parents to give other articles apart from a Hero Honda Motorcycle and it was threatened that unless demand was fulfilled the bidayagi would not be performed . It is alleged that her parents were constrained to eventually buy a Hero Honda Motorcycle and give the same to the husband whereupon on 4.6.1998 the bidayagi took place

and she entered her matrimonial home. It was further alleged that a list of articles given to her as presentations worth about Rs.1 ½ lacs was handed over to her whereupon accused no.1, the cousin(mamera bhai) of the husband had put his signature in token of receipt. It is also alleged that thereafter all the accused started putting pressure on her for bringing Rs.4 lacs so that land could be purchased at Purnea in the name of the husband and also to construct a pakka house in he village and due to the non fulfillment of the demand she was subjected to further torture in various ways which she withstood and eventually in 1999 a son was born out of the wedlock. It is also stated that in the meanwhile several panchayatees were held whereat the parents of the complainant expressed their inability to pay the demanded sum although at all of these panchayatees the accused persons used to give assurance they would neither make any demand in future nor torture the wife. It is alleged that her torture continued unabated and in the preceding year all the accused assaulted her mercilessly and ousted her from the matrimonial home even as she was pregnant a second time. It is further alleged that on 24.9.2001 accused no.1 wrote a letter to her father stating that if the demand was not fulfilled he would give Talak to the complainant. Another panchayati was held whereat it was deliberated as to how marriage would be revived and after the fatwa was given by Mufti their marriage took place a second time on 6.11.2001.

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It is further alleged that at the time of bidayagi the complainant's parents gave Rs.41,000/- to accused no.1 with a request

to add his own funds thereto so that a small house could be constructed in village Amour over the land which had been purchased but even then her torture continued for non fulfillment of the demand. Although a second son was born out of the wedlock, her torture continued and she was again finally ousted from the matrimonial home on 10.10.2002 after being assaulted by the accused persons. On this occasion she was told by her husband that he was giving the first Talak to her and if the demanded amount was not paid within a month the remaining two Talaks would follow and ever since she has been living in her parental home.

It has been submitted on behalf of the petitioners that they are innocent, have committed no offence as alleged and they have been implicated falsely. While denying the allegation of repeated dowry demands and physical assault, it has been submitted that the same are false and baseless specially when they were made 4 years after the marriage. It is further submitted that in fact, the complainant and husband are living in Purnea town with their children and the three other petitioners are living in their village and they have no concern with the complainant and her husband and the dispute arose at Purnea when complainant's father, brothers and maternal uncle (mama) came there and forcibly took away the complainant.

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It has further been submitted that at the inquiry the complainant gave her statement on S.A. and three other witnesses were examined on her behalf and although sufficient materials were not available the learned Magistrate took cognizance without

application of mind.

In this connection, it was sought to be submitted that the husband had given a written report before the Officer Incharge, K. Hat Police Station on 13.10.2002, i.e., prior to the lodging of the instant complaint stating therein that his father-in-law along with his two brothers-in-law and mama of the complainant had come to his residence at Purnea and tried to forcibly take away his wife and her children and when he opposed the same they had assaulted him and on the basis thereof K. Hat P.S. Case No.371 of 2002 was registered under Sections 147, 448, 341, 342, 380, 323, 504 and 506 I.P.C. and the case was found to be true by the supervising authority and the present case had been filed as a counter blast to the petitioner's case .

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It was sought to be submitted by the learned counsel for the petitioners that the petitioners had given to his brother-in-law, Ajaj Anwar, a total sum of Rs.44000/-, the details and cheque numbers and date whereof are given in paragraph-12 of the petition and another sum of Rs.2000/- was paid to the other borthe-in-law, Wakar Anwar on2.5.2002 vide cheque. It was also submitted that although petitioner no.1 had requested his father-in-law to return his wife and children, the same had not been carried out and an application of conjugal right in Islamic Court of the locality at Jokihat was filed wherein notice was served but the father-in-law choose not to appear and the court after inquiry and verification of the facts gave a finding directing the father of the complainant to return the wife and children to the petitioner no.1. A copy of the decision of the Islamic Court has

been annexed as Annexure-5 to the petition. In the meanwhile the police also submitted a chargesheet in the K. Hat P.S. Case No.371 of 2002 wherein cognizance was taken.

It has further been submitted that in the meanwhile although the petitioner no.1 was ready and willing to keep his wife and children but under pressure of her father the complainant filed a Maintenance Case under Section 125 Cr.P.C. being Maintenance Case No.63 of 2004 wherein the complainant claimed that she had been divorced by her husband.

Assailing the submission advanced by the learned counsel for the petitioners, the learned counsel for O.P. No.2 submitted that it was apparent from the complaint petition as also the evidence adduced at the inquiry that the complainant had been subjected to torture both physically and mentally for non fulfillment of the demand of Rs.4 lacs. It was further submitted that there was a constant demand by the petitioners; firstly it was for the Hero Honda Motorcycle and then for cash. It was further submitted that the story of the petitioners filing a police case and approaching Islamic Court are their defence which cannot be looked into at this stage and can be considered at the stage of framaing charge.

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It is by now well settled that the High Court in exercise of its powers under Section 482 Cr.P.C. will not look into the defence of the alleged wrong doer since those matters are to be considered at the trial. For the present the High Court is only required to see on consideration of the evidence available before it in the records as to

whether a prima facie case has been made out or not and for the purpose High Court is neither required to reappraise evidence available before the Magistrate nor substitute its own view point in place of the satisfaction of the Magistrate. In that view of the matter and in view of the speaking order of the learned Sub Divisional Judicial Magistrate, Purnea wherein he has given cogent reasons for accepting the case to be a prima facie one, I see no reason to interfere with the impugned order.

Accordingly, I find no merit in this application which is dismissed.

(Abhijit Sinha,J)

Patna High Court, Patna.
Dated: The 14th of August, 2008.
Pradeep Srivastava/A.F.R.

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